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Attorneys for Defendant SOFTSCAPE, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SUCCESSFACTORS, INC.,

Plaintiff,

v.

SOFTSCAPE, INC.,

Defendant.

Case No.: C-08-1376 (CW)

**DECLARATION OF JESSICA L. GRANT  
IN SUPPORT OF DEFENDANT'S  
ADMINISTRATIVE MOTION TO SEAL**

Date: N/A  
Time: N/A  
Dept.: Courtroom 2

Honorable Claudia Wilken

I, JESSICA L. GRANT, declare as follows:

1. I am an attorney with the law firm of Taylor & Company Law Offices, LLP, counsel of record for defendant Softscape, Inc. ("Softscape"). I have personal knowledge of the facts set forth in this declaration, and if I am called as a witness I would and could testify competently to the matters contained herein.

2. On April 23, 2008 the Honorable Claudia Wilken issued an order regarding evidence preservation, a true and correct copy of which is attached to this declaration as Exhibit A ("Order"). In Paragraph 8 of the Order, the Court required that no later than April 30, 2008, counsel for Softscape file under seal a declaration attesting to and confirming that the evidence

1.

1 preservation directives described in Paragraph 7 of that Order had been carried out by counsel for  
2 defendant.

3 3. In accordance with the express terms of the Order, Softscape hereby lodges with  
4 the Clerk of this Court a sealed copy of the Declaration of Jessica L. Grant attesting to the matters  
5 required by the provisions of Paragraph 7 of the Order.

6 I declare under penalty of perjury under the laws of the United States of America that the  
7 foregoing is true and correct. Executed this 30th day of April, 2008, in San Francisco, California.

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10 /s/ Jessica L. Grant  
11 JESSICA L. GRANT  
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**EXHIBIT A**

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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7  
8 SUCCESSFACTORS, INC., a Delaware  
corporation,

9 Plaintiff,

10 v.

11 SOFTSCAPE, INC., a Delaware  
12 corporation; and DOES 1-10,

13 Defendants.  
14 \_\_\_\_\_/

No. C 08-1376 CW

EVIDENCE  
PRESERVATION ORDER

15  
16 The Court hereby orders:

17  
18 1. The parties shall take reasonable steps to preserve  
19 documents, data, tangible things, and other discoverable materials  
20 within the scope of Fed. R. Civ. P. 26(b) and 34(a) that are known  
21 or reasonably likely to exist and are related to the issues  
22 presented by the action.

23 2. "Identify" is to be interpreted to mean taking such  
24 reasonable steps as necessary to evaluate the locations where  
25 materials reasonably anticipated to be subject to discovery in this  
26 action may be stored.

27 3. "Locate" is to be interpreted to mean taking such  
28 reasonable steps as necessary to determine whether the locations

1 described in Paragraph 2, above, actually contain materials  
2 reasonably anticipated to be subject to discovery in this action.

3 4. "Preservation" is to be interpreted to mean accomplishing  
4 the goal of maintaining the integrity of all documents, data,  
5 tangible things, and other discoverable materials reasonably  
6 anticipated to be subject to discovery in this action, including  
7 their metadata. Preservation means taking reasonable steps to  
8 prevent the partial or full destruction, alteration, testing,  
9 deletion, shredding, incineration, wiping, relocation, migration,  
10 theft, or mutation of such material, as well as negligent or  
11 intentional handling that would make material incomplete or  
12 inaccessible.

13 5. "Documents, data, tangible things, and other discoverable  
14 materials" shall include, if they exist, writings, records, files,  
15 correspondence, reports, memoranda, calendars, diaries, minutes,  
16 electronic messages (including, without limitation, chat or instant  
17 messaging), voicemail, e-mail and attachments, telephone message  
18 records or logs, electronically stored information ("ESI"), computer  
19 and network activity logs, hard drives, backup data, removable  
20 computer storage media such as PDAs, flash memory, CDs, DVDs, tapes,  
21 disks and cards, printouts, document image files, web pages,  
22 databases, spreadsheets, software, books, ledgers, journals, orders,  
23 invoices, bills, vouchers, checks, statements, itineraries,  
24 reimbursements, worksheets, summaries, compilations, computations,  
25 charts, diagrams, graphic presentations, drawings, films, digital or  
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1 chemical process photographs, video, phonographic, tape or digital  
2 records or transcripts thereof, drafts, jottings and notes, whether  
3 maintained on facilities provided by a party or not. Information  
4 that serves to identify, locate, or link such material, such as file  
5 inventories, file folders, indices and metadata, is also included in  
6 this definition.

7  
8 6. "Log" means a file that lists requests made to or  
9 transmissions from a server, that lists who visited a server, or  
10 that lists a user's activities during such visits. "Metadata" means  
11 file-specific information showing changes or access or saves to a  
12 file, when that activity occurred, and who changed or accessed or  
13 saved the file.

14 7. Counsel are directed to inquire of their respective  
15 clients if the business practices of any party involve the routine  
16 destruction, recycling, relocation, or mutation of such materials  
17 and, if so, direct the party, to the extent practicable for the  
18 pendency of this order, either to:

- 19 A. Halt such business processes;  
20 B. Sequester or remove such material from the  
21 business process; or  
22 C. Arrange for the preservation of complete and  
23 accurate duplicates or copies of such material,  
24 suitable for later discovery if requested.

25 8. The lead counsel representing each party shall, within one  
26 week of this order, submit to the Court under seal and pursuant to  
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1 Fed. R. Civ. P. 11, a statement that the directive in paragraph 7,  
2 above, has been carried out. In addition, Defendant's CEO Dave  
3 Watkins shall, within one week of this order, submit a declaration  
4 under penalty of perjury that such actions have been taken.

5 9. Counsel for the parties shall notify their clients of  
6 their document preservation obligations pursuant to federal law.  
7 Counsel shall also exercise reasonable efforts to identify and  
8 request that any non-party who may possess materials reasonably  
9 anticipated being subject to discovery take reasonable measures to  
10 preserve such material.

11 10. With no limitation on Softscape's obligations to preserve  
12 evidence generally, Softscape and its agents, servants, and  
13 employees, and all persons acting under, in concert with, or for  
14 them shall, for the period from December 1, 2007 through April 15,  
15 2008,

- 16
- 17 a. Preserve any historical logs or metadata showing
  - 18 access to the Presentation, Softscape intranets, or
  - 19 other locations where the Presentation ever resided.
  - 20 b. Preserve any logs of external communications from
  - 21 Softscape computers over the internet, including but
  - 22 not limited to logs showing employees' use of third
  - 23 party e-mail systems such as MSN Hotmail, Google
  - 24 gmail (including without limitation
  - 25 hcmknowledge2008a@gmail.com), and Yahoo! mail.
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- 1 c. Preserve logs of dynamically (or otherwise) assigned
- 2 internal IP addresses within Softscape.
- 3 d. Preserve a true, bit-for-bit copy of any server(s)
- 4 within Softscape's possession, custody, or control,
- 5 including but not limited to the IIS Intranet Server,
- 6 that ever had a copy of the Presentation or that
- 7 transmitted the Presentation.
- 8 e. Preserve all e-mail boxes, repositories, archives
- 9 (including but not limited to .pst files), profiles,
- 10 and calendars for Softscape's executives, sales
- 11 teams, and other persons who accessed the
- 12 Presentation, received a copy of the Presentation, or
- 13 participated in communications about the
- 14 Presentation, including without limitation Dave
- 15 Watkins, Rick Watkins, Lillian Watkins, Susan Mohr,
- 16 Dennis Martinek, Rick Vatcher, William Hurley (or
- 17 Hurly), and any person using the email address
- 18 mwest@softscape.com.
- 19 f. Preserve all Softscape e-mail distribution lists,
- 20 including without limitation sales@softscape.com.
- 21 g. Preserve all logs and a true copy of any shared
- 22 resource, e.g., Share Rooms, eRooms, Intranets,
- 23 dedicated to Softscape sales or marketing groups.
- 24 h. Preserve any VPN and FTP logs.
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1 i. Make true, bit-for-bit copies of storage media of any  
2 computer (including networked storage media and work  
3 computers) used by persons to access the  
4 Presentation, receive a copy of the Presentation, or  
5 participate in communications about the Presentation,  
6 and in addition any laptop or desktop computer used  
7 by Dave Watkins, Rick Watkins, Lillian Watkins, Susan  
8 Mohr, Dennis Martinek, Rick Vatcher, William Hurley  
9 (or Hurly), and any person using the email address  
10 mwest@softscape.com, and any person using IP  
11 addresses 98.216.168.122, 24.34.56.79, 82.108.171.66,  
12 217.118.122.88, 62.140.137.160, 65.96.233.62,  
13 65.96.237.54, or 74.94.170.178. (This does not  
14 include Softscape's Corporate IP address  
15 (68.236.68.19).)

16  
17 IT IS SO ORDERED.

18  
19 Dated: 4/23/08



CLAUDIA WILKEN  
United States District Judge